United States Court of Appeals

for the Second Circuit

APPELLANT'S REPLY BRIEF

Doc. 74-1187

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

MAY 3 1974

OJI KWESI SEKOU, etc., et al,

Appellants,

- v -

Robert J. Henderson, Superintendent, et al,

Appellees,

PROOF OF SERVICE

I, Oji Kwesi Sekou, also known as Chris Reed, being duly sworn, deposes and says:

On the 23rd day of April, 1974, I forwarded five (5) copies of the affixed Reply Brief to the United States Court of Appeals for the Second Circuit, to John P. Flannery, pro se law clerk at the United States Courthouse, Foley Square, New York, New York, via the United States mail, and one (1) copy to Burton Herman, Assistant Attorney General at 2 World Trade Center, New York, New York.

Respectfully,

Dated April 26, 1974

OJI KWESI SEKOU,
a/k/a CHRIS REED
No. 64410
135 State Street
Auburn, New York, 13021

Sworn to and subscribed this 1st day of ~~April~~ May, 1974.

Elizabeth A. Gaynes

ELIZABETH A. GAYNES
Notary Public in the State of New York
Qualified in Onon. Co. No. 34-4517268
My Commission Expires March 30, 1976

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REPLY BRIEF FOR APPELLANTS

In Propria Personam:

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REPLY BRIEF FOR APPELLANTS

STATEMENT

Appellants on an appeal from order of the Hon. Edmund Port, United States District Court Judge, Northern District of New York; dismissing a civil rights complaint on the 4th day of December, 1973.

Appellants submitted their Brief in Support of their Claim, dated February 8, 1974. On the 17th day of April, 1974, appellants received a brief dated April 10, 1974, for appellees.

ARGUMENT

1. Appellants as pre-trial detainees have the right to grow and wear beards and goatees.

Appellants are convicted persons and in addition are under criminal indictment for which they are making court appearance and are in the pre-trial stages.

Appellants are incarcerated at the Auburn Correctional Facility and are awaiting trial on criminal indictments through agreements made between the former Deputy Commissioner of Correction, Walter Dunbar and a former member of the prosecutor's staff, Mr. Hammock.

Appellants are housed in a state correctional facility, and under criminal indictment should be entitled to the same rights as a person housed in a county jail pending criminal matters and trial.

In Smith v Sampson, 349 F. Supp. 268 (1972), the Court was very firm in striking down the claim of prison officials, that the wearing of hair styles by inmates interferred with the security and identification of the inmates; the Court acknowledged the Constitutional Right of pre-trial detainees and that the shaving regulation and hair cut are unconstitutional in these words:

> The three state interests of sanitation, aid in identification of inmates and security advanced in support of the compulsory haircut and shave regulation did not justify infringement of the constitutional rights of pre-trial detainees in jail to maintain individuality by choosing the style and manner in which they wished to wear their hair, and jail policy relative to compulsory

haircut and shave as applied to the pre-trial detainees was unconstitutional under the due process clause.

A person awaiting trial and appearing in state court has a right to wear beard and goatee, Sealv Manson, 326 F. Supp. 1375 (1971) and such rights are protected against State impairment, Collins v Schoonfield, 344 F. Supp. 257 (1972), Wallace v Ford, 346 F. Supp. 156 (1972).

Appellees being aware of pre-trial detainees' rights, appear to have conceded the issue since there was no claim otherwise of Appellants' right to wear beards as pre-trial detainees. Yet the issue must be adjudicated upon by the Courts, due to the fact that appellants are and have been punished for the desire to wear bear and goatee before the State Court.

II. ARGUMENT

Appellants as human beings of the male sex have the God given and Constitutionally protected right to wear beards and goatees, whether convicted or not.

There is no showing by appellees that the wearing of beard or goatee by appellants would cause or has caused a health problem, nor have appellees shown that lice, etc. would occur by the wearing of beards and goatees, Seal v Manson, 326 F.Supp. 1375 (1971). It should be made clear at this point that each inmate is responsible for the maintenance of his own hygiene and is provided with a minimum of two showers a week; further, that hot water is provided a minimum of twice a day, in which to maintain a standard hygiene setting, and rules requiring upkeep.

There is no more of a helath hazard by wearing beard and goatee, than other hairs on the body; but, in fact, less predicated upon the fact that one's face is in constant sight of others, and the face is most likely to be washed more often because of convenience and appearance.

There is no threat to prison security in inmates wearing beards, or creating an identification problem. The appellees neglect to mention the fact that inmates are required to wear name tags on all there clothing, and that security does not allow inmates to pass freely through the prison. Further, due to close confinements, if a violated offense was to be committed by an inmate he would at once be apprehended.

Further, the wearing of a beard and goatee well regulated

would make the inmate no more immune from identification than an inmate with a thick moustache, 3 to 6 inches of head hair and sideburns which is allowed.

The claim of security and identification is a total fabrication, and should be rejected.

Convictions do not deprive persons of constitutional rights automatically, Washington Post Co. v. Kleindienst, 357 F.Supp. 770 (1972); and there is no valid state interest to justify constitutional deprivations of appellants' right to personal liberty, Briscone v. Kusper, 435 F.2d 1046 (1970), Richard v. Thurston, 424 F.2d 1281 (1970). The right to wear beard and goatee is fundamentally an aspect of Personal Liberty, Parker v. Fry, 323 F.Supp. 728 (1970), being constitutionally protected. Prison administrations are without power to impede a citizen's exercise of his right in this regard under the Constitution; and the State or Prison is without authority to establish laws, rules and regulations beneath the constitutional standard. One clause of the Constitution is without power to override another part of the Constitution, Faulkner v. Clifford, 289 F.Supp. 895 (1968); it is clear the prison regulations are without power to supercede any part of rights protected by the Constitution.

There is nothing constructive in way of rehabilitation by the prison authority's denying appellants their God-given right to grow beards and goatee, but is contrary to the aim of rehabilitation to deny appellants their right and serves no means for social re-instatement; thus the court should"inquire as to the actuality of relation between means and ends," Allen v. Nelson, 354 F.Supp. 505 (1973).

The rules reqiring inmates to shave is an arbitrary predjudice, strictly discriminating against incarcerated persons. It is inconsistent in light of the fact that employees of the Department of Correction are allowed to wear beards and goatees in any manner; and they are more of a hygiene problem since many of them have farms with livestock, all of them travel outside of the prison and come in contact with street life, enter public places and then return to the prison where they come into contact with the inmates who are exposed to very few things within the prison.

Appellants, human beings of the male sex, are required by nature to grow beards. Such a characteristic given to them by God is an honor and should be respected.

The prison custom requiring a person to shave his beard or goatee is basically prejudicial as noted by Justice Douglas in Ham v. South Carolina, 41 Law Week 4171 (1973), in which he stated:

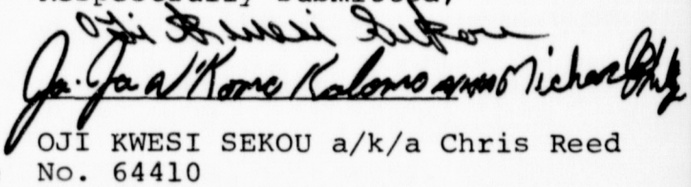
> Prejudice to hair growth is unquestionably of a serious character. Nothing is more indicative of the importance currently being attached to hair growth by the general populace than the barrage of cases reaching the court evidencing the attempt by one segment of society to control the plumage of another. (at 4172)

CONCLUSION

The District Court order should be reversed and Judgment entered for such relief as prayed for in complaint.

Dated: April 23, 1974

Respectfully submitted,



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